Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of Memorandum Account to Record and Track Incremental Costs of Implementing California Consumer Privacy Act of 2018. (U39E).	Application 19-03-020
And Related Matters.	Application 19-03-022 Application 19-03-025

DECISION AUTHORIZING ESTABLISHMENT OF CALIFORNIA CONSUMER PRIVACY ACT MEMORANDUM ACCOUNTS

Summary

This decision grants the requests by Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company for memorandum accounts to record and track incremental costs to implement the California Consumer Privacy Act of 2018 (Assembly Bill 375, Stats. 2018, ch. 55; Senate Bill 1121, Stats. 2018, ch. 735). This decision does not provide authority for rate recovery. Rate recovery will require Commission authorization in a separate proceeding.

Application (A.) 19-03-020, A.19-03-022 A.19-03-025 are closed.

1. Background

On March 27, 2019, Pacific Gas and Electric Company (PG&E) filed Application (A.) 19-03-020. On March 28, 2019, San Diego Gas & Electric

Company (SDG&E) and Southern California Gas Company (SoCalGas) filed A.19-03-022. On March 29, 2019, Southern California Edison Company (SCE) filed A.19-03-025. These Applications all seek authority from the Commission to establish memorandum accounts to record and track incremental costs related to compliance with the California Consumer Privacy Act of 2018 (CCPA).

CCPA was promulgated by Assembly Bill (AB) 375 and Senate Bill (SB) 1121,[1] and was signed into law on June 28, 2018. The effective date of the legislation is January 1, 2020. Applicants explain that the exact nature of the legislation is still in flux because amendments are pending.[2] The rights granted by the CCPA will be regulated by the California Attorney General's office, which has begun drafting regulations to implement and enforce the new law. This rulemaking is ongoing and the utilities expect the rulemaking to continue through, at least, June 2020.[3]

The CCPA is a privacy statute impacting companies doing business with California consumers that, among other things,[4] have gross revenues in excess of $25 million.[5] All three utilities have gross revenues in excess of $25 million and, therefore, fall within the requirements of the CCPA.

The CCPA generally requires the utilities, on the consumer's request, to disclose what data they collect with respect to them, furnish that data to the consumer upon request, permit the consumer to opt out from the transfer of that

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[1] Civil (Civ.) Code §§ 1798.100 *et seq*; AB 375, Stats. 2017-2018, ch. 55; SB 1121, Stats. 2018, ch. 735.

[2] Prehearing Conference (PHC) Transcript at 5.

[3] PHC Transcript at 13.

[4] Civ. Code § 1798.140(c)(1).

[5] PG&E Application at 5.

data, inform the consumer as to whom their data was disclosed, and delete (subject to exceptions) that data.[6]

The personal information to which the CCPA applies is broadly defined and generally includes utility usage information, financial account numbers, and social security numbers, which are all part of the utility customer operations databases.[7] For example, California Civil (Cal. Civ.) Code § 1798.140(o) defines personal information as including the following: (1) commercial information, including records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies; (2) internet or other electronic network activity information, including, but not limited to, browsing history, search history, and information regarding a consumer's interaction with an internet web site, application or advertisement; (3) professional or employment-related information; and (4) inferences drawn from any of the information identified in this subdivision to create a profile about a consumer reflecting the consumer's preferences, characteristics, behavior, attitudes, intelligence, abilities, and aptitudes. The CCPA also establishes a private cause of action against the utilities with respect to data breaches.[8]

The utilities expect to engage in significant and potentially expensive upgrades to their customer data, IT and privacy systems, procedures, standards, compliance requirements and training.[9] The utilities explain that the exact amount of the costs needed for compliance is impossible to estimate at this time

[6] SoCalGas and SDG&E Application at 2-3; PG&E Application at 3-4; SCE Application at 2-3.

[7] SoCalGas and SDG&E Application at 2-3; PG&E Application at 3-4; SCE Application at 2-3.

[8] SDG&E and SoCalGas Application at 3, citing to Cal. Civ. Code § 1798.150(a)(1).

[9] PG&E Application at 2.

because so much is unknown about the legislation due to the ongoing rulemaking by the Attorney General.[10] Costs will also change depending on the number of customers that request data information.[11] At the PHC, the utilities estimated costs of $20 million to $50 million based on implementation costs of the European equivalent law, known as the General Data Protection Regulation,[12] by other businesses.

Each Applicant seeks memorandum accounts to track incremental costs. Each Applicant submitted draft tariff language to implement the memorandum account. None of the Applications seeks cost recovery.[13] Each Applicant explains that cost recovery will be deferred to a separate proceeding. Each Applicant requests that the memorandum accounts be made effective as of the filing date of the Applications or sooner because costs are already being incurred to ensure compliance with this law by January 1, 2020.[14]

No protests were filed.

An initial PHC was held on May 8, 2019 to discuss the issues of law and fact and determine the schedule for resolving the matter. At the PHC, all parties agreed that the issues presented could be resolved without evidentiary hearings.[15] A scoping memo was issued on May 17, 2019. The scoping memo determined that these Applications were properly consolidated. The scoping memo also set forth the schedule and the scope of the consolidated proceedings.

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[10] SoCalGas and SDG&E Application at 2-3; PG&E Application at 2; SCE Application at 6.

[11] SCE Application at 6.

[12] June 11, 2019 Joint Comments at 8.

[13] SoCalGas and SDG&E Application at 1-2; PG&E Application at 1-2; SCE Application at 1-2.

[14] SoCalGas and SDG&E Application at 3; PG&E Application at 3-5; SCE Application at 3-5.

[15] PHC Transcript at 21.

This case was submitted upon receipt of the joint brief.

2. Issues Before the Commission

The issue before the Commission is whether the Commission should grant the requests by PG&E, SDG&E, SoCalGas, and SCE for authority to establish memorandum accounts to track and record incremental costs related to compliance with the CCPA?

3. Memorandum Accounts

Below we discuss whether memorandum accounts are the appropriate mechanism for the utilities to rely upon. In this discussion, we emphasize that the Applicants have stated their intention to record incremental expenses in their memorandum accounts and have committed to a reasonableness review in a General Rate Case (GRC) proceeding or other acceptable ratemaking proceeding. We then analyze whether the costs are speculative and whether, based on the information provided, will be substantial. Lastly, we review whether the utilities' request to establish an effective date for the memorandum accounts prior to the date of today's decision is appropriate.

3.1. Track Incremental Costs not Recoverable in GRC

A memorandum account allows a utility to isolate and list costs related to a particular activity and later to seek to recover of those costs in rates. We require such recovery from pre-approved memorandum accounts to avoid unlawful retroactive ratemaking:

> It is a well established tenet of the Commission that ratemaking is done on a prospective basis. The Commission's practice is not to authorize increased utility rates to account for previously incurred expenses, unless, before the utility incurs those expenses, the Commission has authorized the utility to book those expenses into a memorandum or balancing account for possible future recovery in rates. This

practice is consistent with the rule against retroactive ratemaking.[16]

The memorandum accounts requested here falls within the broad outline of the acceptable uses of memorandum accounts in that the Applicants all seek to track and record incremental costs that, for various reasons, could not be included in their GRCs or other ratemaking applications. In other words, in order to preserve the Applicants ability to recover these costs in rates while not running afoul of the prohibition against retroactive ratemaking, a memorandum account should be relied upon.

As PG&E explains, it is already incurring costs to implement the CCPA.[17] It was unable to include a forecast of the CCPA implementation costs in its 2020 GRC because the CCPA legislation was not fully enacted until September 2018, which was too late to be included in the forecast revenue requirement for PG&E's 2020 GRC.[18] SoCalGas and SDG&E are also incurring expenses and explain they were unable to include a forecast in its current GRC because the legislation was first enacted on June 28, 2018, two weeks before hearings in their 2019 GRC.[19] Likewise, SCE explains that it expects to incur costs in 2019 and 2020 related to the CCPA and that due to the broad nature of the law, the lack of specificity, and the ongoing rulemaking by the Attorney

[16] Decision (D.) 92-03-094, 43 CPUC 2d 596 (1992), 1992 Cal PUC LEXIS 236, at 7; *see also* 1999 Cal PUC LEXIS 906, at 15.

[17] PG&E Application at 1.

[18] PG&E Application at 3, fn. 1.

[19] SoCalGas and SDG&E Application at 2.

General, it is unable to provide an estimate in its 2021 GRC which it will be filing in September 2019.[20]

In each of these above situations, the utility is already incurring costs or expects to soon. Moreover, each utility is unable to rely on its GRC to collect costs in rates. For this reason, a memorandum account is the appropriate mechanism to provide the utilities the opportunity to recover the costs in rates, provided these costs are found reasonable, to avoid retroactive ratemaking.

3.2. Reasonableness of Costs

Recovery of the recorded costs is not automatic. Rather, a utility must be able to show that the costs in the memorandum account are reasonable. We explained this requirement in D.04-03-039,

> When the Commission authorizes creation of a memorandum account, it only allows for the recordation of certain costs in that account. Before a utility can recover in rates the costs recorded in the account, the utility must demonstrate the reasonableness of the costs. [A water company's request for establishment of such an account] seeks only the creation of various water quality memorandum accounts, so that it may book, or record, its costs in those accounts. When [the water company] seeks to recover the costs, it will apply to the Commission to do so, and will demonstrate the reasonableness of those costs.[21]

The Commission has made it clear that a reasonableness review of costs recorded into a memorandum account will be required. Here, the Applicants all state that they will submit costs for reasonableness review and recovery in the appropriate GRC or other ratemaking application. Recovery will not be

[20] SCE Application at 6.

[21] D.04-03-039 at 39.

automatic. Accordingly, Applicants request satisfies this requirement imposed on memorandum accounts.

3.3. Incremental Costs

An additional requirement of memorandum accounts is that the costs recorded be incremental. In D.04-03-039, for example, the Commission only allowed the water utility to post costs that were truly incremental, and not already recovered in rates.

Likewise, here the costs booked to the memorandum accounts must be the incremental capital costs or expenses.[22] We emphasize incremental. Each utility must be able to demonstrate that existing rates do not directly or indirectly already include consideration for the recovery of the costs recorded in the memorandum accounts. Each utility has described the costs to be recorded in these memorandum account as *incremental* but the utilities will have to provide proof as well when the costs are reviewed for reasonableness.

3.4. Substantial and not Speculative

We now review whether the costs to comply with the CCPA are substantial and not speculative. If costs are speculative and not substantial in nature, they cannot be recorded in a memorandum account. [23] In such situation, the costs are premature and a memorandum account is not warranted.

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[22] June 11, 2019 Joint Comments at 7. (Examples of the types of cost include, but are not limited to: Development of new technologies and processes to (1) present CCPA information on the utilities' websites; (2) provide consumer mechanisms to make requests for personal information notice, access, deletion and opt-out; (3) back-end technologies and processes to validate consumers, perform consumer personal information data discovery and fulfill consumer requests; and (4) employee labor related to manual fulfillment of requests prior to the implementation of automated solutions.)

[23] D.18-06-029 at 7; *see also* D.18-10-051 at 10.

In evaluating whether costs are speculative, the Commission has addressed facts similar to the facts presented here. In D.10-12-026, the Commission authorized a memorandum account related to AB 32 implementation costs. PG&E, SCE, SoCalGas, and SDG&E filed a joint application (A.10-08-002) requesting that the Commission authorize the establishment of memorandum accounts to record expenses incurred to pay AB 32 administrative fees. The Commission noted, it was not certain those fees would materialize but still authorized the memorandum accounts stating, "[s]imply because these is some uncertainty concerning whether and when the fees will be assessed should not prevent a utility from establishing a memorandum account to record such cost in the event they are incurred."[24]

Similarly, in D.15-01-051, the Commission granted SCE's proposal to establish a memorandum account to record costs associated with implementing SB 43, a bill establishing a new renewable energy program, reasoning that "[a] memorandum account will allow the investor owned utilities (IOU) to track administrative and marketing costs, and provide an opportunity for review before these amounts are approved by the Commission."[25]

Likewise, here the utilities are unsure of the exact amount of costs they will incur to implement the legislation but estimate that costs could run into the millions. As the Commission stated in D.10-12-026 and D.15-01-051, this lack of knowledge should not, however, stand in the way of the Commission authorizing memorandum accounts. It is clear that costs will be incurred in this case; the utilities are solely unsure of the amount. The utilities have stated that

[24] D.10-12-026 at 6.

[25] D.15-01-051 at Finding of Fact 146.

the costs could be up to millions of dollars. Therefore, we find that the utilities have provided sufficient detail regarding costs. We do not find that costs are speculative. We also find, based on the representations of the utilities, that the costs could be potentially significant.

3.5. Effective Date of Memorandum Accounts

In terms of the effective date of the memorandum accounts, PG&E and SCE request that the memorandum accounts be effective as of the date the Applications were filed, and SoCalGas and SDG&E request that the Commission set the effective date as of January 1, 2019 or no later than the date the Applications were filed. The utilities all explain that they are incurring expenses already to comply with the legislation. In prior decisions, the Commission has adopted effective dates before the date of the Commission decision establishing the accounts.

For example, in D.18-11-051 and D.18-06-029, the Commission found it could establish an effective date of a memorandum account prior to the date of the decision. In doing so, the Commission cited to Public Utilities Code § 1731(a), which states that the Commission "may set the effective date of an order or decision prior to the date of issuance."

Based on Commission precedent and statutory authority, we find it appropriate to establish effective dates of the memorandum accounts as of the date the Applications were filed. For PG&E, the date would be March 27, 2019; for SCE the date would be March 29, 2019; and for SoCalGas and SDG&E it would be March 28, 2019.

The memorandum accounts shall be dissolved after recovery is sought.

4. Comments on Proposed Decision

Under Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the Commission may reduce or waive the period for public comment in uncontested matters. Accordingly, the otherwise applicable period for public review and comment is begin waived.

5. Assignment of Proceeding

Commissioner Genevieve Shiroma is the assigned Commissioner and Regina DeAngelis is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On March 27, 2019, PG&E filed A.19-03-020.
2. On March 28, 2019, SDG&E and SoCalGas filed A.19-03-022.
3. On March 29, 2019, SCE filed A.19-03-025.
4. These proceedings were consolidated by the May 17, 2019 Scoping Memo.
5. These Applications all seek authority from the Commission to establish memorandum accounts to record and track incremental costs related to compliance with the CCPA. CCPA was promulgated by AB 375 and SB 1121, and was signed into law on June 28, 2018. The effective date of the legislation is January 1, 2020.
6. The exact nature of the legislation is still in flux because amendments are pending in the legislature.
7. The CCPA is a privacy statute impacting companies doing business with California consumers that, among other things, have gross revenues in excess of $25 million.
8. All three utilities have gross revenues in excess of $25 million and therefore fall within the requirements of the CCPA.

9. The rights granted by the CCPA will be regulated by the California Attorney General's office, which has begun drafting regulations to implement and enforce the new law.

10. The CCPA generally requires the utilities, on the consumer's request, to disclose what data they collect with respect to them, furnish that data to the consumer upon request, permit the consumer to opt out from the transfer of that data, inform the consumer as to whom their data was disclosed, and delete (subject to exceptions) that data.

11. Significant and potentially expensive upgrades to their customer data, IT and privacy systems, procedures, standards, compliance requirements and training may be needed to comply with the CCPA by January 1, 2020.

12. The exact amount of the costs needed for compliance is impossible to estimate at this time because so much is unknown about how the legislation will be implemented due to the ongoing rulemaking by the Attorney General.

13. Costs will also change depending on the number of customers that request data information.

14. Based on the experience of businesses complying with a European version of this privacy law, the utilities estimate costs potentially ranging between $20-$50 million to comply with the CCPA.

15. The utilities are currently incurring compliance costs and, for that reason, seek an effective date of the memorandum accounts prior to the date of this decision.

16. Each utility was unable to recover these costs in its most recent or upcoming GRC.

17. Each utility will only record incremental costs to these memorandum accounts.

18. Costs will be incurred in this case; the utilities are solely unsure of the amount.

Conclusions of Law

1. It is reasonable to rely on a memorandum account to record incremental expenses related to implementing the CCPA.
2. Applicants should submit costs for reasonableness review and recovery in the appropriate GRC or other ratemaking application.
3. Cost recovery will not be automatic.
4. Costs booked to the memorandum accounts should be the incremental capital costs and expenses related to implementing the CCPA.
5. Each utility should be able to demonstrate that existing rates do not directly or indirectly already include consideration for the recovery of the costs recorded in the memorandum accounts for implementing the CCPA.
6. Costs should not be found speculative because costs will be incurred before January 1, 2020 to implement the CCPA.
7. Costs could be potentially significant based on the utilities' estimates.
8. Based on the Commission's precedent and statutory law, it is reasonable to set an effective date for the memorandum accounts on the dates the applications were filed.
9. The effective dates for the memorandum accounts should be as follows: for PG&E, the date would be March 27, 2019; for SCE the date would be March 29, 2019; and for SoCalGas and SDG&E it would be March 28, 2019.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas and Electric Company (SDG&E), and Southern California Gas Company (SoCalGas) are authorized to file Tier 1 advice letters to establish memorandum accounts to record and track incremental costs to implement the California Consumer Privacy Act of 2018. The effective dates of these memorandum accounts shall be March 27, 2019 for PG&E, March 29, 2019 for SCE, March 28, 2019 for SoCalGas and SDG&E. These memorandum accounts shall be dissolved after recovery is sought. The utilities shall use similar or substantially similar names for these memorandum accounts.
2. Application (A.) 19-03-020, A.19-03-022, and A.19-03-025 are closed.

This order is effective today.

Dated _____, at Los Angeles, California.